

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 KEVIN SO,) Case No. CV 08-03336 DDP (AGRx)
12 Plaintiff,)
13 v.) **ORDER GRANTING EXTENSION OF**
14 LAND BASE, LLC; UNIVEST) **DEADLINE TO AMEND**
15 FINANCIAL SERVICES, INC.;)
16 BORIS LOPATIN, individually) [Motion filed on April 10, 2009]
and d/b/a BORIS LOPATIN)
ASSOCIATES and CHARLES W.)
WOODHEAD,)
Defendants.)
17)
18)

20 This matter comes before the Court on Plaintiff Kevin So's
21 Motion for an Order Extending the Deadline to Amend. So seeks to
22 modify the date to amend pleadings in the Scheduling Order.
23 Defendants KB&M Projects International, LLC and CTL Projects
24 International, LLC filed an opposition to this Motion. Though they
25 did not file oppositions, Plaintiff notes that defendants Kevin
26 Kondas and Mira Meltzer object to the relief he requests. After
27 reviewing the materials submitted by the parties and considering
28 the arguments therein, the Court grants the motion and orders that

1 no further extensions of the deadline will be allowed, except by
2 stipulation.

3 **I. BACKGROUND**

4 Plaintiff Kevin So ("Plaintiff") filed this action on May 20,
5 2008. His First Amended Complaint alleges, among other things,
6 fraud and unjust enrichment on the part of numerous defendants.

7 The Court's Scheduling Order originally set the deadline for
8 joining other parties and amending the pleadings for March 9, 2009.
9 See Scheduling Order, Docket Entry No. 84 (November 10, 2008).
10 With leave from the Court, Plaintiff filed his First Amended
11 Complaint within this deadline on January 16, 2009. On March 2,
12 2009, the Court granted Plaintiff's *Ex Parte* Application to Amend
13 the Scheduling Order. Order re: Ex Parte Order Extending Deadline
14 to Amend, Docket Entry No. 110 (March 2, 2009). That order
15 extended the deadline to amend to May 8, 2009.

16 **II. DISCUSSION**

17 Plaintiff requests that the Court extend the Scheduling
18 Order's deadline to amend an additional sixty days, to July 7,
19 2009. Federal Rule of Civil Procedure 16(b) provides that a
20 scheduling order "may be modified only for good cause." Fed. R.
21 Civ. P. 16(b). In assessing whether there is "good cause" under
22 Rule 16(b), a court "primarily considers the diligence of the party
23 seeking the amendment" and the "moving party's reasons for seeking
24 modification." Id. at 609; Fed. R. Civ. P. 16(b), Adv. Comm. Note
25 to 1983 Amdt; Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087
26 (9th Cir. 2002) ("The pretrial schedule may be modified if it
27 cannot reasonably be met despite the diligence of the party seeking
28 the extension." (internal quotation marks omitted)). "If the

1 moving party was not diligent, "the inquiry should end." Mammoth
2 Recreations, 975 F.2d at 609. Potential prejudice to the opposing
3 party may also be a consideration. Id.

4 Plaintiff argues that good cause exists to amend the
5 scheduling order because he has not yet completed his
6 investigation. He argues that he has been diligently pursuing
7 discovery, but that his efforts have been delayed by objections
8 raised by defendants and third parties from whom Plaintiff has
9 sought discovery. See Pl.'s Mem. at 2-3. Additionally, Plaintiff
10 argues that the various defendants will not be prejudiced by the
11 granting of this motion because only two of the new defendants
12 added by Plaintiff's First Amended Complaint have answered.

13 Defendants KB&M and CTL oppose the motion on two primary
14 grounds. First, Defendants argue that Plaintiff has not been
15 diligent because he "waited until the last minute" to serve
16 discovery. According to Defendants, Plaintiff's actions
17 "demonstrate ongoing delay, not diligence." Second, Defendants
18 note that the motion is procedurally defective because Plaintiff
19 failed to comply with this District's "meet and confer" local rule
20 by contacting Defendants on the day Plaintiff filed his motion.
21 See C.D. Cal. L.R. 7-3. Defendants emphasize that "Plaintiff has
22 known of Defendants' objections to his subpoenas for Defendants'
23 financial information since March 23, 2009," but made no effort to
24 contact defendants prior to the day he filed the motion.
25 Defendants also request that the Court prohibit Plaintiff from
26 completing further discovery until after the expiration of the new
27 amendment deadline, if the Court grants Plaintiff's motion.

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1 The Court grants Plaintiff's motion, but advises Plaintiff
2 that the Court will grant him no further extensions to this
3 deadline. It appears to the Court that Plaintiff has been
4 conducting discovery to fully investigate his cause of action and
5 that Plaintiff has presented adequate explanation as to why he
6 anticipates being unable to meet the May 8, 2009 deadline.
7 Defendants have articulated no prejudice to them for extending the
8 deadline.

9 The Court will not deny the motion for failure to comply with
10 Local Rule 7-3. Local Rule 7-3 requires that counsel meet and
11 confer 20 days prior to the filing of a motion. C.D. Cal. L.R. 7-
12 3. Although the Court shares Defendants' frustration with
13 Plaintiff's failure to comply with the Local Rules, the Court is
14 satisfied with Plaintiff's explanation for why that conference was
15 not possible. Mot. at 2. In particular, counsel explained that
16 the delay resulted from an attempt to resolve discovery disputes
17 with the parties. Defendants have not provided an alternative
18 series of events. See Opp. at 3-4; Thibodo Decl. The Court notes
19 that the failure to meet and confer until the *day of filing*,
20 however, likely could have been prevented. In the future, the
21 Court notes that, where counsel is unable to meet the deadlines
22 imposed by Local Rule 7-3, counsel should attempt to confer with
23 opposing counsel *as soon as possible* after that deadline.

24 Finally, the Court denies Defendants' request that Plaintiff
25 be precluded from further discovery until after July 7, 2009.
26 First, the Court has expressly granted jurisdictional discovery as
27 to defendants Meltzer and Kondas. Second, the Court is not
28 convinced that Plaintiff is abusing the discovery process.

1 Additionally, the Court notes that, to the extent Plaintiff
2 attempts to rely on discovery propounded after this Order to
3 support a motion to amend, Defendants may present related arguments
4 about diligence or prejudice in opposing that motion.

5 **III. CONCLUSION**

6 For the foregoing reasons, the Court grants the motion and
7 modifies the deadline to amend to July 7, 2009. The Court advises
8 Plaintiff that he will be granted no further extensions to this
9 deadline. Should he wish to amend his pleadings after the new
10 deadline, he will need to bring a motion pursuant to Rule 16(b).

11 See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th
12 Cir. 1992).

13 IT IS SO ORDERED.

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16 Dated: May 8, 2009


DEAN D. PREGERSON
United States District Judge

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